

zone on May 15, 2001 to discuss the broader questions of "What is our transit zone strategy?" and "Do we have a balanced approach in the transit zone?" I hope for a discussion on the current threat, agency capabilities, current shortcomings, the relationship with the source zone and Plan Colombia, the projected future threat, any needed improvements, interagency and international relationships, and DOD and intelligence community support to our transit zone operations. I am especially concerned about reports of aging aircraft and vessels in the both the Customs Service and Coast Guard fleet inventories. I am also particular interested in the countries of Haiti, Jamaica, Cuba, Venezuela, Mexico, and the Bahamas, as well as the Commonwealth of Puerto Rico. Success in the transit zone is so critical for both the United States as well as the many countries throughout the Caribbean, who are so dependent on trade and tourism, and who struggle to avoid the dark influences of the narcotics threat.

I want to be sure we are doing our transit zone missions effectively and competently. I appreciate the difficult task of foreign investigations and interdiction, and appreciate the daily efforts of the Customs Service, Coast Guard, Drug Enforcement Administration, Department of Defense, Department of State, and our international allies. The mission is an important one and deserves our serious attention and sustained effort.

#### WTO APPELLATE BODY DECISION

Mr. BAUCUS. Mr. President, two weeks ago, the World Trade Organization's Appellate Body issued a decision affirming a Dispute Settlement Panel opinion from last December that ruled that the United States' imposition in July 1999 of restrictions on imports of lamb meat under Section 201 of the Trade Act of 1974 was inconsistent with our obligations under the WTO's Agreement on Safeguards. The December Panel decision was so obviously wrong in virtually every respect that one would have expected the Appellate Body to reverse the panel and recognize the U.S. International Trade Commission's decision for the well-reasoned and balanced determination that it was. Instead, the Appellate Body has once again taken it upon itself to substitute its judgment for the ITC's. This is a continuation of a troubling trend, in which WTO dispute settlement panels and the Appellate Body fail to give adequate deference to expert administrative bodies that have carefully reviewed the facts. This kind of decision risks eroding U.S. support for the WTO's dispute settlement procedures.

While there is a lot not to like in the Appellate Body's decision, I am particularly outraged by the Appellate Body's conclusion that the ITC erred in

concluding that lamb farmers, ranchers, and commercial feeders are properly part of the domestic industry for purposes of determining injury and threat of injury. The Appellate Body concluded that growers and feeders produce a product—live lambs—that cannot strictly be considered "like" lamb meat within the meaning of the WTO Safeguards Agreement, and by implication, under Section 201 of the Trade Act of 1974; according to the Appellate Body, only packers and processors produce a "like" product. Had this been an antidumping or countervailing duty decision, such a conclusion would have precluded lamb growers and feeders from petitioning for relief along with packers and processors—a notion that I find intolerable. Fortunately, Section 201 and the Safeguards Agreement give standing to producers of both "like" and "directly competitive" products, and the Appellate Body's opinion appears to leave open the possibility that lamb growers and feeders could properly be counted as part of the domestic industry on the grounds that live lambs are "directly competitive with," as opposed to "like," lamb meat.

The WTO will lose all credibility if growers of agricultural products are disqualified from petitioning for relief when massive imports of food products create oversupplies and cause domestic price levels to plummet. Thousands of families in my home state have a long history of sheep ranching. Sheep ranchers and farmers are the very heart of the U.S. industry producing lamb meat, and the WTO needs to recognize such basic economic realities.

Predictably, the government of Australia and New Zealand, which brought the WTO appeal, have already called for the United States to immediately terminate the U.S. import relief program in response to the Appellate Body's decision. As bad as the Appellate Body's decision is, I believe that it is clear that it does not require termination of the United States' import relief program for the lamb industry. I am today calling on U.S. Trade Representative Robert Zoellick to reject Australia and New Zealand's demands and instead invoke the procedure prescribed by Section 129 of the Uruguay Round Agreements Act. Ambassador Zoellick should promptly request the ITC to provide him with an advisory report on whether it believes that its original decision can be brought into compliance with the Appellate Body's decision. If that advice is affirmative, I hope and expect that Ambassador Zoellick will take the further prescribed step of asking the ITC to issue a revised determination in conformity with the Appellate Body's decision.

The period of relief originally proclaimed by President Clinton is scheduled to run through July of next year, and I am confident that the ITC will be

able to revise its original determination so that this badly needed relief can run its course. In the meantime, I call upon President Bush—whose own home state is the United States' largest producer of lamb—to direct USDA and other agencies to redouble their efforts to see that the industry gets the full measure of assistance that it was promised as part of the import relief package.

#### THE SMALL BUSINESS LIABILITY REFORM ACT

Mr. MCCONNELL. Mr. President, last Thursday, Senator LIEBERMAN and I introduced S. 865, the "Small Business Liability Reform Act," which aims to restore common sense to the way our civil litigation system treats small businesses. In our legal system, small businesses, which form the backbone of America's economy, are often forced to defend themselves in court for actions that they did not commit and to pay damages to remedy harms they did not cause. These businesses also frequently find themselves faced with extraordinarily high punitive damages awards. These unfortunate realities threaten the very existence of many small businesses, and when American small businesses go under, our economy is harmed as new products are not developed, produced, or sold, and employers cannot retain employees or hire new ones.

Small businesses, those with 25 or fewer full-time employees, employ almost 60 percent of the American workforce. Because the majority of small business owners earn less than \$50,000 a year, they often lack the resources to fight unfair lawsuits which could put them out of business. When faced with such a lawsuit, many of these entrepreneurs must either risk a lengthy battle in court, in which they may be subjected to large damage awards, or settle the dispute out of court for a significant amount even though they did not cause the harm in the first place. Either way, our current system jeopardizes the livelihood and futures of small business owners and their employees.

The Small Business Liability Reform Act remedies these ills with three common-sense solutions, all of which protect our nation's entrepreneurs from unfair lawsuits and excessive damage awards. First, it would award punitive damages against small business only upon clear and convincing evidence, rather than upon a simple preponderance of evidence, and would set reasonable limits, three times the total of all damages or \$250,000, whichever is less, on the amount of punitive damages that can be awarded.

Second, our bill would restore basic fairness to the law by eliminating joint and several liability for small businesses for non-economic damages, such

as pain and suffering, so a small defendant is not forced to pay for harm he did not cause. Under the current joint and several liability, small businesses, when found liable with other defendants, may be forced to pay a disproportionate amount of the damages if they are found to have "deep pockets" relative to the other responsible parties. For example, a small business who was found responsible for only 10 percent of the harm may have to pay half, two-thirds, or even all of the damages if his co-defendants cannot pay. Again, without altering a small business's joint and several liability for economic damages, such as medical expenses, the Small Business Liability Reform Act provides that small businesses are responsible for only the portion of the non-economics damages they caused. Thus, the bill partially relieves a situation where a small business is left holding the bag with respect to injuries it did not inflict.

Third and finally, our bill addresses some of the iniquities facing non-manufacturing product sellers. Currently, a person who had nothing to do with a defective and harmful product other than selling it can be sued along with the manufacturer. Under the reforms in the Small Business Liability Reform Act, a product seller can only be held liable for harms caused by his own negligence, intentional wrongdoing, or breach of his own warranty.

This bill provides much needed protection and relief to both small business owners and consumers. By making our legal system reasonable and fair to small businesses, we will remove one of the greatest barriers to the market, the threat of crippling, excessive lawsuits, that prevent entrepreneurs from starting a small business. That means increased competition, better goods, and more jobs at a time when the health of America's economy and job market appear uncertain. And by injecting common sense into these laws, we will remove the excessive litigation costs that drive up the cost of goods and services for all Americans. The Small Business Liability Reform Act is a win for America's entrepreneurs, consumers, and workers, and it is my hope that the Senate will enact this bipartisan bill. Finally, I would ask unanimous consent that letters in support of this bill from the National Federation of Independent Business and the Small Business Legal Reform Coalition be placed in the RECORD.

SMALL BUSINESS  
LEGAL REFORM COALITION,  
May 10, 2001.

Hon. MITCH MCCONNELL,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of the Small Business Legal Reform Coalition, we are writing to applaud your sponsorship of the Small Business Liability Reform Act of 2001 and express our strong support for its passage. We commend you for your efforts to

restore common sense to our civil justice system—one that takes a particularly heavy toll on the smallest of America's businesses.

The frequency and high cost of litigation is a matter of growing concern to small businesses across the country. Today's civil justice system presents a significant disincentive to business start-ups and continued operations. If sued, business owners know they have to choose between a long and costly trial or an expensive settlement. Business owners across the nation risk losing their livelihood, their employees and their future every time they are confronted with an unnecessary lawsuit.

This legislation would make two reforms that have topped the small business community's agenda for years: cap punitive damages and abolish joint liability for non-economic damages for those with fewer than 25 employees. These reforms have been among the recommendations of the White House Conference on Small Business since the early 1980s—and the time has come to protect the smallest of small businesses from excessive damage awards and frivolous suits.

This bill would also hold non-manufacturing product sellers liable in product liability cases when their own wrongful conduct is responsible for the harm and thus reduce the exposure of innocent product sellers, lessors and renters to lawsuits when they are simply present in a product's chain of distribution or solely due to product ownership. Should the manufacturer be judgment-proof, the product seller would be responsible for any damage award, ensuring that deserving claimants recover fully for their injuries.

In the end, we believe that enactment of the Small Business Liability Reform Act will inject more fairness into the legal system and reduce unnecessary litigation and legal costs. We also believe that it protects the rights of those with legitimate claims. We thank you again for your support of these common sense reforms and look forward to working with you to ensure the success of this important legislation.

American Automotive Leasing Association, American Care Rental Association, American Consulting Engineers, Council, American Insurance Association, American Machine Tool Distributors Association, Associated Builders and Contractors, Associated Equipment Distributors, Automotive Parts and Service Alliance, American Rental Association, Coalition for Uniform Product Liability Law, Citizens for Civil Justice Reform, Equipment Leasing Association, Independent Insurance Agents of America, International Mass Retail Association, International Housewares Association, Motorcycle Industry Council, National Association of Convenience Stores, National Association of Manufacturers, National Association of Plumbing-Heating-Cooling Contractors, National Association of Wholesaler-Distributors, National Federation of Independent Business, National Grocers Association, National Restaurant Association, National Retail Federation, National Small Business United, NPES—Association for Suppliers of Printing, Publishing & Converting Technologies, Painting and Decorating Contractors of America, Plumbing-heating-Cooling Contractors—National Association, Small Business Legislative Council, Society of Independent Gasoline Marketers of America, Specialty Equipment Market

Association, Steel Service Center Institute, Trunk Renting and Leasing Association, and U.S. Chamber of Commerce.

NATIONAL FEDERATION OF  
INDEPENDENT BUSINESS,  
Washington DC, May 11, 2001.

Hon. MITCH MCCONNELL,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of the 600,000 members of the National Federation of Independent Business (NFIB), I would like to thank you for your sponsorship of the Small Business Liability Reform Act of 2001 and express our strong support for its passage. I commend you for your efforts to restore common sense to our civil justice system—one that takes a particularly heavy toll on the smallest of America's businesses.

The frequency and high cost of litigation is a matter of growing concern to small businesses across the country. Today's civil justice system presents a significant disincentive to business start-ups and continued operations. If sued, business owners know they have to choose between a long and costly trial or an expensive settlement. Business owners across the nation risk losing their livelihood, their employees and their future every time they are confronted with an unnecessary lawsuit.

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In the end, we believe that enactment of the Small Business Liability Reform Act will inject more fairness into the legal system and reduce unnecessary litigation and legal costs. We also believe that it protects the rights of those with legitimate claims. We thank you again for your support of these common sense reforms and look forward to working with you to ensure the success of this important legislation.

Sincerely,

DAN DANNER,  
Senior Vice President,  
Federal Public Policy.

#### LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY last month. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.